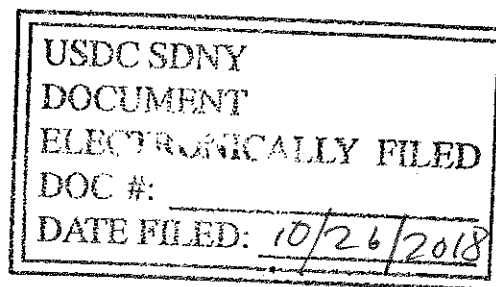




October 24, 2018

**Via ECF:**

Hon. Denise Cote  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312



Re: Letter Motion to Dismiss Pursuant to Federal Rule 4(m)  
Malibu Media v. John Doe Subscriber assigned IP Address 74.66.244.146  
1:18-cv-06582-DLC

Your Honor,

As previously noted, I represent the anonymous Subscriber in the matter noted above.

Federal Rule of Civil Procedure 4(m) dictates that "If a defendant is not served within 90 days after the complaint is filed the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against the defendant or order that service be made by a specified time." Although a court may extend the time for good cause, "Good cause is generally found only in exceptional circumstances where the plaintiff's failure to serve process in a timely manner was the result of circumstances beyond [her] control." *Eastern Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999).

This action was filed on July 22<sup>nd</sup>, 2018. More than 90 days have since elapsed, and Plaintiff has not effectuated service or even filed a complaint capable of being served. On October 19, 2018, Plaintiff sought further time to effectuate service. Plaintiff's request was promptly denied. As such, the Subscriber respectfully requests that this Court dismiss the instant matter without prejudice, in accordance with Rule 4(m) and to adjourn the scheduled case management conference. A proposed order to that effect has been submitted concurrently herewith.

Respectfully Submitted,

Nicholas Ranallo, Attorney at Law  
California Bar # 275016  
New York Bar # 4620985  
Washington Bar # 51439



*The request for dismissal is denied. Service must be made before the 11/16/18 conference.*  
*Denise Cote*  
*10/26/18*